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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,) Case No.: 2:08-cr-0172-RLH-PAL
11 PLAINTIFF,) JOINT MOTION TO CORRECT
12 VS.) DEFENDANT'S SENTENCE
13 DAICY VARGAS,)
14 DEFENDANT.)

15 THE UNITED STATES OF AMERICA, by and through Daniel G. Bogden, United
16 States Attorney, District of Nevada, and Brian Pugh, Assistant United States Attorney, and
17 DAICY VARGAS, by and through attorney Jonathan L. Powell, pursuant to F.R.Crim.P. 35(a) file
18 this Joint Motion to Correct Defendant's Sentence. The parties recommend that this Court remove
19 from its sentence of defendant the requirement that she pay restitution and as grounds therefore
20 states as follows:

21 1. On December 15, 2011, this Court sentenced defendant.

22 2. This Court ordered that defendant pay \$17,000,000 in restitution, jointly and

23 severally with her coconspirators.

24 3. Restitution is mandatory when authorized under Title 18, United States

25 Code, Sections 1593, 2248, 2259, 2264, 2327, 3663, or 3663A, or Title 21, United States Code,

1 Section 853(q). *USSG § 5E1.1(a)(1)*. None of those sections require restitution for the crime of
2 Misprision of a Felony, Title 18, United States Code, Section 4.

3 4. United States Sentencing Guideline section 5E1.1(a)(2) authorizes the court
4 to make restitution a term of probation “if the offense is not an offense for which restitution is
5 authorized under 18 U.S.C. § 3663(a)(1) but otherwise meets the criteria for an order or restitution
6 under that section.” *USSG § 5E1.1(a)(2)*.

7 5. Title 18, United States Code, Section 3663(a)(3) states, “The court **may** also
8 order restitution in any criminal case to the extent agreed to by the parties in a plea agreement. *18*
9 *U.S.C. § 3663(a)(3) (emphasis added)*. Hence, restitution is discretionary.

10 6. The parties agreed to restitution in the plea agreement. The agreement left
11 determination of the amount of restitution to the court. The fact section of the plea agreement
12 stated that the losses suffered by banks at the time defendant entered the plea totaled more than
13 \$17,000,000. U.S. Probation used this figure in recommending that defendant pay restitution of
14 \$17,000,000. Based upon the recommendation of Probation, this Court ordered defendant to pay
15 restitution in an amount of \$17,000,000. However, the losses were not \$17,000,000; rather they
16 were more than \$17,000,000.

17 7. After sentencing, the clerk’s office requested that the government provide a
18 restitution list identifying the victims and the amount owed to each. Since the time of sentencing in
19 this case and the trial of *U.S. v. Grimm, et. al.*, case number 2:08-cr-0064-RLH-GWF, the FBI has
20 been working on determining the current total loss figure. To date, the loss figure has risen to
21 more than \$52,000,000 and the FBI has not finished calculating. There are additional transactions
22 the FBI is researching. The process is complicated and has prolonged the completion of the
23 sentencing process as the clerk’s office waits upon the government for a restitution list to attach to
24 the judgment. In no instance, would the restitution list come to a total of exactly \$17,000,000.

25 8. Title 18, United States Code, Section 3663(a)(1)(B)(ii) states:

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2 To the extent that the court determines that the complication and
3 prolongation of the sentencing process resulting from fashioning of an
order of restitution under this section outweighs the need to provide
restitution to any victims, the court may decline to make such an order.

4 18 U.S.C. § 3663(a)(1)(B)(ii).

5 9. Defendant was seventeen years old and a single mother of one child when
6 Steven Grimm recruited her to assist in his mortgage fraud scheme. Defendant is now a single
7 mother of two children working a low income job. It is unlikely that any restitution she could pay
8 when distributed pro rata will make a significant dent in the more than \$52,000,000 restitution
9 owed to victims.

10 WHEREFORE, the parties request that this Court remove the restitution provision
11 of defendant's sentence on the basis that "the complication and prolongation of the sentencing
12 process resulting from fashioning of an order of restitution under this section outweighs the need
13 to provide restitution to any victims."

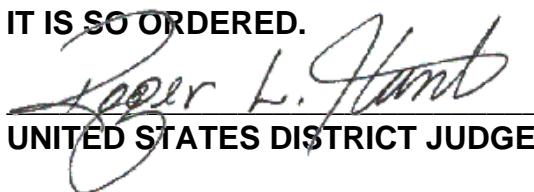
14 Submitted this 17th day of January 2012.

15 DANIEL G. BOGDEN
16 United States Attorney
17

18 /s/ Brian Pugh _____
19 BRIAN PUGH
20 Assistant United States Attorney
21

22 /s/ Jonathan L. Powell _____
23 JONATHAN L. POWELL
24 Attorney for defendant Daicy Vargas
25

26 **IT IS SO ORDERED.**


UNITED STATES DISTRICT JUDGE

DATED: January 23, 2012